IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9757 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH @ BALLU BALRAMBHAI SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MR AM PAREKH for Petitioner

MR UDAI R BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/11/2000

ORAL JUDGEMENT

1. The petitioner has challenged by way of this petition under Article 226 of the Constitution the detention order passed against him by Police Commissioner, Ahmedabad City on 15th July, 2000 under the

Gujarat Prevention of Anti Social Activities Act, 1985 (PASA short) in exercise of powers conferred upon him by Sec. 3(1) of the said Act. The petitioner is in actual detention in pursuance of the said order from 16th July, 2000.

2. The fact reveals that right from 14th of January, 2000 to 10th July, 2000, in all, nine crimes are registered against the petitioner before Amrawadi, GIDC and Vatva Police Stations, mainly under Section 380, 379, 457, etc. of the Indian Penal Code. The detaining authority Police Commissioner, Ahmedabad City took into consideration the facts of the above mentioned cases and statements of the witnesses, who on assurance of anonymity offered statements to the effect that the petitioner was a head strong and was indulging in illegal activity. From this material, the detaining authority reached to subjective satisfaction that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act.

3. Learned Advocate Mr. A.M.Parekh for the petitioner and learned Advocate Mr. Udai Bhatt, AGP for the respondents were heard. The order of detention has been challenged on various grounds, but the petition can be disposed on one ground alone and that is non-application of mind qua fact of the case by the detaining authority.

4. The purpose of the Gujarat Prevention of Anti Social Activities Act, 1985 is clear from its preamble and that is preventive detention of bootleggers, dangers persons, drug offenders, immoral traffic offenders, etc. for preventing their anti social activities prejudicial to the maintenance of public order. This detention is temporary as per the provisions of this Act for 12 months. The detaining authority therefore is expected to apply his mind to reach subjective satisfaction as to whether the person concerned is capable of continuing his anti social and illegal activities, by which the public order is being disturbed. While going through the order of detention, it is mentioned by the detaining authority that all of the above said 9 crimes registered against the petitioner, the petitioner was in judicial custody when the order came to be passed and served upon the petitioner. The detaining authority further stated that though the petitioner was in judicial custody, was likely to be released on bail by the competent court and was likely to continue his anti social and illegal activities.

5. The order of detention in this case is vitiated by non-application of mind, which is two fold in this case. Firstly, the detaining authority failed to consider that when the petitioner was in judicial custody he was in capable of continuing his anti social and illegal activities. Secondly, presuming that the petitioner shall continue his illegal and anti social activities because he was likely to be released on bail by competent court is also a non-application of mind by the detaining authority, vitiating the order of detention. The detaining authority failed to consider that the bail of the petitioner could be opposed and in proper cases, resort to Section 437(5) of the Cr.P.C. also can be taken.

6. In this view of the matter, since the detention order being without application of mind by the detaining authority, is vitiated and is required to be quashed and set aside.

7. In this view of the matter, this petition is allowed. The detention order dated 15th July, 2000 passed by Police Commissioner, Ahmedabad City, against the petitioner is hereby ordered to be quashed and set aside. Petitioner - Mukesh @ Ballu Balrambhai Soni, is ordered to be set at liberty forthwith if he is not required for any other purpose. Rule is made absolute.

(J.R. Vora, J.)

p.n.nair